

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MICHIGAN

IN RE MODERN PLASTICS,  
CORPORATION  
*Debtor.*

CHAPTER 7  
CASE NO. 09-00651-swd  
JUDGE SCOTT W. DALES  
FILED JANUARY 26, 2009

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NEW PRODUCTS CORPORATION  
And UNITED STATES OF AMERICA  
by NEW PRODUCTS CORPORATION,

Plaintiffs,

Adv. Proceeding No. 13-80252-swd

v

THOMAS R. TIBBLE, individually and  
in his capacity as Chapter 7 Trustee, and  
FEDERAL INSURANCE COMPANY,

Defendants.

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**FIRST AMENDED COMPLAINT**

New Products Corporation ("New Products"), individually and on behalf of the United States, by and through its counsel, Demorest Law Firm, PLLC and Drew S. Norton, states as follows for its First Amended Complaint against Defendant Thomas Tibble, individually and in his capacity as Chapter 7 Trustee ("Tibble" or "Trustee") and Defendant Federal Insurance Company:

**Parties**

1. New Products is a Michigan corporation with its principal place of business at 448 N. Shore Drive, Benton Harbor, Michigan.

2. New Products is a secured creditor of Modern Plastics Corporation ("Modern Plastics"), holding a first mortgage on the real estate located at 489 N. Shore Dr., Benton Harbor, Michigan (the "Property").

3. The Property is located across the street from New Products' factory and offices.

4. Defendant Tibble does business in Kalamazoo, Michigan as a Chapter 7 bankruptcy Trustee.

5. Tibble was appointed by the Court as the Trustee in the Modern Plastics bankruptcy.

6. Tibble is licensed by the State of Michigan as a Certified Public Accountant and as an insurance agent.

7. Tibble is also the founder of Trustee Insurance Agency, which specializes in offering insurance coverage to Trustees "for all types of case assets, including but not limited to boats, vehicles, real estate (residential and commercial), inventory, and equipment."

8. Defendant Federal Insurance Company is an insurance company based in New Jersey.

9. Federal Insurance Company provides bonding for Chapter 7 bankruptcy trustees.

10. Federal Insurance Company issued a blanket bond in the amount of \$2 Million covering the activities of Defendant Tibble as a Chapter 7 bankruptcy Trustee (Exhibit 1).

11. The bond is conditioned upon the faithful performance by the Trustee of his official duties.

### **Jurisdiction**

12. This Complaint relates to In re Modern Plastics, Corporation, Case No. 09-00651-swd, a Chapter 7 bankruptcy proceeding pending in United States Bankruptcy Court for the Western District of Michigan.

13. This Complaint is brought pursuant to 28 U.S.C. §959, 11 U.S.C. §704, 11 U.S.C. §105, Bankruptcy Rule 2010(b), and Bankruptcy Rule 9025.

14. This Court has jurisdiction of this matter because it is a core proceeding pursuant to 28 U.S.C. §157.

### **Appointment of Trustee**

15. Modern Plastics filed its voluntary Chapter 7 petition on January 26, 2009.

16. Tibble was appointed by the Court as the bankruptcy Trustee on or about January 27, 2009.

17. Tibble continues to serve as the Trustee, and the Chapter 7 case remains open.

### **The Property**

18. The assets of the bankruptcy estate included the factory building and real estate located at 489 N. Shore Dr., Benton Harbor, Michigan (the "Property"). The Property is about 12 acres in size.

19. When the Trustee took custody of the Property in January 2009, the Property was in good operating condition, fully usable as a manufacturing facility or for other purposes. Modern Plastics had ceased its office and manufacturing operations in the Property only a few months earlier.

20. The Trustee never sold the Property. Instead, it remained an unused asset of the bankruptcy estate for nearly five years.

21. On or about October 9, 2013, almost five years after the Trustee took control of the Property, the Trustee requested the Court's permission to abandon the Property.

22. On or about November 27, 2013, the Bankruptcy Court conditionally approved the Trustee's abandonment of the Property, as long as the U.S. Environmental Protection Agency ("EPA") and the Michigan Department of Environmental Quality did not object to abandonment. These agencies did not object to abandonment, and the Court entered an Order approving abandonment of the Property on January 6, 2014.

23. The abandonment of the Property does not affect the Trustee's liability for events that occurred prior to abandonment, including extensive damage to the building; the Trustee's failure to protect the Property; the Trustee's failure to insure the Property; the Trustee's failure to object to property tax assessments; and the Trustee's failure to determine the extent of any remaining environmental contamination, including his failure to respond to communications from the EPA.

**New Products' Mortgage on the Modern Plastics Property**

24. New Products is a secured creditor of Modern Plastics Corporation ("Modern Plastics"), holding the first mortgage on the Property as assignee of Bank of America.

25. Bank of America assigned its Proof of Claim, and assigned all of the loan documents, including the Mortgage on the Property, to New Products.

26. The principal balance owed on the mortgage is approximately \$1.2 Million, plus accrued interest and costs.

27. New Products is also an unsecured creditor based upon its pre-petition invoices to the Debtor.

**Trustee's Lack of Effort to Obtain a Legitimate Sale of the Property, and Trustee's Relationship with Harbor Shores**

28. The Trustee made very little effort to sell the Property, except to entities related to the adjacent Harbor Shores Golf Course and Harbor Shores development ("Harbor Shores").

29. The Trustee considered and treated Harbor Shores as the inevitable eventual buyer of the Property.

30. Harbor Shores planned to demolish the building on the Property as part of its golf course and residential development.

31. Consistent with the plans of Harbor Shores, the Trustee's expected purchaser of the Property, the Trustee managed the Property for destruction of the building, not to protect the assets of the estate.

32. The Trustee claims that the Property had little value, but never obtained an appraisal of the Property.

33. In 2012, the Trustee asked the Court to approve an option to sell the Property to a Harbor Shores entity for \$25,000.

34. This proposed \$25,000 option was a "sweet heart" deal for Harbor Shores. The proposed buyer was a disguised Harbor Shores entity.

35. After New Products objected to the proposed \$25,000 option, the Trustee withdrew the request for approval of the option.

36. New Products offered a higher price to purchase the assets, but the Trustee did not pursue that offer.

37. The Trustee leased the Property to be used for parking during the 2012 Senior PGA Championship golf tournament, for a price of \$4,000.

38. The Lease was intended to benefit Harbor Shores in its efforts to acquire and develop the Property.

39. The Trustee turned down a higher offer from a third party to lease the Property for parking during the golf tournament.

40. The Trustee did not disclose the other offer for lease of the Property to the Court.

**Trustee's Failure to Protect and Maintain Property**

41. A Chapter 7 Trustee is required to obtain control over the property of the bankruptcy estate, and immediately take all steps that may be reasonably necessary to preserve the assets. 11 USC § 704.

42. The Trustee failed to maintain or secure the Property, which has been heavily damaged by theft, vandalism, and/or sabotage as a result.

43. The Trustee never visited the Property.

44. In 2009, the Trustee informed the State of Michigan that he did not have a key for the Property (Exhibit 2).

45. When New Products requested access to the Property in early 2013, the Trustee's attorney stated that the Trustee did not have a key for the Property. (Exhibit 3).

46. The Trustee was notified in about December 2009 that building materials ("wire and other stuff") were being taken from the Property, but the Trustee did not take action to prevent further incidents from occurring. (Exhibit 4).

47. Over the four years since the Trustee was initially notified of theft from the building by "scrappers," the Property has been stripped of all valuable building materials (including copper, steel, electrical equipment, and other items). All the electrical wiring and electrical equipment have been removed from the building. Pipe and plumbing fixtures have also been removed. Steel beams and pipes have been cut. There are two large holes in the roof. The holes have been caused by the Trustee's lack of maintenance and security, and the cutting and removal of steel support beams. There are also damaged walls and debris throughout the building.

48. The cost to repair the damage has been estimated to be in excess of \$3.5 Million (Exhibit 5).

49. Over \$2 Million of the repair cost estimate is to replace copper wiring and electrical equipment, which was taken from the Property during the Trustee's control of the Property, in order to restore the Property to a usable manufacturing facility.

**Trustee's Failure to Determine Extent of Environmental Issues**

50. During the Trustee's control of the Property, the EPA conducted a removal action at the Property due to a leaking PCB transformer in 2010.

51. An exchange of emails between Lorraine Thomas of the Michigan Department of Environmental Quality and Rosita (Rosie) Clark of the U.S. Environmental Protection Agency in March 2009 reflects the Trustee's lack of diligence toward the Property (Ex. 2).

52. The state and federal environmental agencies were trying to get access to the Modern Plastics Property to investigate a report about a leaking transformer, and had a discussion with the Trustee. The Trustee asked them to wait to deal with any environmental issues at the Property until the Property could be sold and the issues would be "someone else's problem." Lorraine Thomas (MDEQ) wrote: "The trustee said he does not have a key and could I wait a few weeks until they sell the property and it becomes someone else's problem." (Ex. 2 emphasis added).

53. On March 8, 2010, the EPA issued a General Notice of Potential Liability to the Trustee.

54. The Trustee failed to respond to the EPA's notice.

55. The EPA Region 5 Office of Regional Counsel sent a letter to the Trustee's attorney requesting a response to the General Notice letter.

56. The Trustee's attorney did not respond to that letter.



57. In the three plus years after the EPA's removal action, the Trustee failed to determine whether environmental contamination remained at the Property after the EPA left the Property, or the extent of that contamination.

58. The Trustee simply assumed, to the detriment of the Property value and any potential sale of the Property, that there were remaining environmental problems on the Property that negatively affected its value.

59. The Trustee took no steps to actually investigate the situation and determine what, if any, effect that any remaining environmental issues had on the Property's value.

60. The Trustee did not make sure that the EPA's activities at the Property were completed. In fact, the EPA's closeout memorandum was not completed until August 2013.

61. The Trustee did not possess a copy of the EPA's closeout memorandum when the Trustee requested that the Court permit abandonment of the Property.

**Trustee's Failure to Insure the Property**

62. The Trustee was also responsible for securing and maintaining insurance on the Property.

63. Tibble is aware of the Trustee's duty to insure the assets of the bankruptcy estate.

64. The website for the Trustee Insurance Agency, Tibble's own company expressly described the Trustee's duty to insure the assets under his watch, and the Trustee's liability for failing to do so:

### **Why Insure Assets?**

The Trustee handbook, page 6-3 states: The Trustee should immediately obtain insurance in an amount sufficient to protect the estate property (which may include insurance against fire, theft, vandalism, liability, and other possible hazards). Section 704(2). Uninsured losses [sic] may require reimbursement directly from Trustee which is not covered by blanket bond. Fiduciary responsibility [is] the main duty of the Trustee or Fiduciary.

65. The Trustee failed to insure the Property after being notified that the then mortgagee, Bank of America, was not going to continue to insure the Property.

66. The Trustee did not seek to abandon the Property until late 2013, almost five years after the Trustee took control of the Property.

67. For most of that time, the Property was uninsured.

### **Trustee's Failure to Object to Property Tax Assessments**

68. Each year during the Trustee's tenure, the City of Benton Harbor notified the Trustee of the assessment of real property taxes on the Property, and the Trustee should have received two property tax bills on the Property each year.

69. The Trustee claims that the Property has little or no value, but the Trustee failed to object to the property tax assessments that were based on the Property having significant value. For example, the 2012 taxable value of the Property was \$973,800, indicating that the Property was worth almost \$2 million.

70. If the Trustee was correct that the Property had little or no value, then the Trustee had a duty to object to the property tax assessments.

71. The Trustee's failure to object to property tax assessments issued during his time as Trustee was at least negligent.

72. The Trustee's failure to object to property tax assessments created an unnecessary and damaging property tax liability for the bankruptcy estate and for New Products as mortgagee.

**Liability of Trustee**

73. The Trustee is liable to New Products in his official capacity because he negligently failed to fulfill his duties as a Chapter 7 Trustee.

74. The Trustee is liable to New Products in his individual capacity because he willfully and deliberately failed to fulfill his duties as a Chapter 7 Trustee.

**Liability of Federal Insurance Company**

75. Defendant Federal Insurance Company is liable to pay any judgment against Trustee Tibble, up to \$2 Million, because he did not faithfully perform his duties as Trustee of Modern Plastics.

**Damages**

76. As a result of the Trustee's inaction, neglect and failure to faithfully perform his duties as bankruptcy trustee with regard to the Property, New Products has sustained significant damages, including diminution in value and impairment of its collateral.

**WHEREFORE**, New Products Corporation respectfully requests that this Court enter Judgment in its favor and against Defendant Thomas R. Tibble, individually and in his capacity as Chapter 7 Trustee and Defendant Federal Insurance Company, in an amount that this Court deems appropriate to compensate New Products, plus interest, costs and attorneys' fees and any other relief appropriate under the circumstances.

Respectfully submitted,

/s/ Melissa L. Demorest  
Mark S. Demorest (P35912)  
Melissa L. Demorest (P68867)  
Demorest Law Firm, PLLC  
Attorneys for creditor  
New Products Corporation  
322 West Lincoln Ave.  
Royal Oak, MI 48067  
248-723-5500  
mark@demolaw.com  
melissa@demolaw.com

Drew S. Norton (P41847)  
Co Counsel for creditor  
New Products Corporation  
898 N. Adams, Suite 2  
Birmingham, MI 48009  
248-797-4013  
drew@drewnortonlaw.com

Dated: January 6, 2014

New Products Corporation:Modern Plastics:ADVERSARY PROCEEDING:First Amended Complaint 2014 01 02 New.docx

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system that will send notification of such filing to the following:

John Chester Fish

[jcf@jdbrill.com](mailto:jcf@jdbrill.com)

Cody H. Knight

[courtmail@raymanstone.com](mailto:courtmail@raymanstone.com)

Dean E. Rietberg

[Dean.E.Rietberg@usdoj.gov](mailto:Dean.E.Rietberg@usdoj.gov)

and all other persons registered to receive e-mailing in this case.

Respectfully submitted,

/s/ Mark S. Demorest

Mark S. Demorest (P35912)

Melissa L. Demorest (P68867)

Demorest Law Firm, PLLC

Attorneys for New Products Corporation

322 W. Lincoln

Royal Oak, MI 48067

248-723-5500

[mark@demolaw.com](mailto:mark@demolaw.com)

[melissa@demolaw.com](mailto:melissa@demolaw.com)

Dated: January 6, 2014

**EXHIBITS INDEX**

1. Blanket Bond
2. March 26, 2009 Email
3. January 25, 2013 Email
4. December 15, 2009 Email
5. Repair Cost Quote

# EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT**  
**Western District of Michigan**

**BLANKET BOND**  
**OF PANEL TRUSTEES/INTERIM TRUSTEES IN CHAPTER 7 CASES**

**Bond No. 8215-38-83**  
**Effective Date November 1, 2008**

**KNOW ALL MEN BY THESE PRESENTS:** That individually, we the Principals listed in Endorsement "A" attached hereto, and those who may from time to time be added to said endorsement by amendment and Federal Insurance Company as Surety, are held and firmly bound unto the United States of America in the amounts stated in said schedule as to each named principal, in lawful money of the United States of America to be paid to the United States for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators and successors jointly and severally, firmly by these presents. Provided, however, that each Trustee shall be liable only for his or her individual Fiduciary responsibilities as Trustee.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT: WHEREAS** the United States Trustee for Region 9, has appointed or will appoint Trustees Pursuant to 11 U.S.C. § 701(a)(1) and 28 U.S.C. § 586(a)(1) to serve in cases commenced in the Bankruptcy Court of the Western District of Michigan under Chapter 7, Title 11, United States Code; and

**WHEREAS,** the said Principals listed in Endorsement "A" attached or subsequently added thereto by amendment may hereafter be appointed to serve as such Trustee in one or more such cases;

**NOW, THEREFORE,** if the said Principals listed in Endorsement "A" attached or subsequently added thereto as Trustee as aforesaid shall obey such orders as the United States Bankruptcy Court or any of the Judges of such Court may make in relation to the trust undertaken by said Trustee, and shall faithfully and truly account for all of the moneys, assets and effects of each estate created by the commencement of each case in which the Trustee has been appointed or will be appointed, and shall in all respects faithfully perform all of the official duties as Trustee, in accordance with the underlying United States Bankruptcy Code, then this obligation to be void; otherwise, to remain in full force and effect.

The liability of the Surety hereunder shall not exceed the amount stated in said Endorsement "A" for any one case as to each named principal, or the aggregate amount stated in said Endorsement "A" as to each named principal for all cases on which claims are asserted as to each named principal regardless of the number of years this bond is in effect and regardless of the number of cases involved.

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WEST. DIST. OF



This bond shall remain in full force and effect with respect to all cases pending in this court, in which the said Principals listed in Endorsement "A" attached or subsequently added thereto have been appointed until the Surety has terminated further liability after one hundred twenty (120) days written notice served to the United States Trustee and the Clerk of the United States Bankruptcy Court of the Western District of Michigan, or until released by the United States Trustee for Region 9. The Surety further agrees that a one hundred twenty (120) day written notice will be served on the United States Trustee and the Clerk of the United States Bankruptcy Court of the Western District of Michigan prior to any change in rating or coverage endorsements.

Signed, sealed and dated October 28, 2008.

Witness or Attest

BY: Christina Costa

Federal Insurance Company

BY: Stephanie M. Harris  
Stephanie M. Harris, Attorney in Fact

ACCEPTED BY THE OFFICE OF THE US TRUSTEE

BY: [Signature]

**UNITED STATES BANKRUPTCY COURT**  
**Western District of Michigan**

**ENDORSEMENT "A" OF THE BLANKET BOND OF PANEL TRUSTEES/  
 INTERIM TRUSTEES IN CHAPTER 7 CASES**

This Endorsement "A" is attached and made a part of Blanket Trustees' Bond No. 8215-38-83 dated the 1st day of November, 2008, as submitted to the U.S. Trustee and filed with the Clerk of the United States Bankruptcy Court of the Western District of Michigan.

Principal	Limit per Case	Aggregate Limit as to all Cases
Rose E. Bareham	\$2,000,000	\$10,000,000
James Boyd	\$2,000,000	\$10,000,000
Thomas Bruinsma	\$2,000,000	\$10,000,000
Elizabeth Chalmers	\$2,000,000	\$10,000,000
Scott A. Chernich	\$2,000,000	\$10,000,000
Darrell R. Dettman	\$2,000,000	\$10,000,000
Lisa Gocha	\$2,000,000	\$10,000,000
Kelly M. Hagan	\$2,000,000	\$10,000,000
James Hoerner	\$2,000,000	\$10,000,000
Stephen L. Langeland	\$2,000,000	\$10,000,000
Marcia R. Meoli	\$2,000,000	\$10,000,000
Jeffrey A. Moyer	\$2,000,000	\$10,000,000
Colleen M. Olson	\$2,000,000	\$10,000,000
John T. Piggins	\$2,000,000	\$10,000,000
John Porter	\$2,000,000	\$10,000,000
Michael Puerner	\$2,000,000	\$10,000,000
Thomas Richardson	\$2,000,000	\$10,000,000
Thomas Tibble	\$2,000,000	\$10,000,000

2008 NOV 17 AM 11:18  
 U.S. BANKRUPTCY COURT  
 WESTERN DISTRICT OF MICH.

Signed, sealed and dated October 28, 2008.

Witness or Attest

Federal Insurance Company

BY: Christine Costa

BY: Stephanie M. Harris  
 Stephanie M. Harris, Attorney in Fact

ACCEPTED BY THE OFFICE OF THE U.S. TRUSTEE

BY: [Signature]

BOND NO. 8215-38-83

UNITED STATES BANKRUPTCY COURT  
Western District of Michigan

AMENDATORY CHANGE (ADDITIONS/DELETIONS) TO ENDORSEMENT "A"  
OF THE BLANKET BOND  
OF PANEL TRUSTEES/INTERIM TRUSTEES IN CHAPTER 7 CASES

\*\*\*\*\*  
This Amendatory Change to Endorsement "A" is attached and made a part of Blanket Trustee's Bond No. 8215-38-83 dated the 1<sup>st</sup> day of November, 2008, as submitted to the U.S. Trustee and filed with the U.S. Trustee for Region 9 and with the Clerk of the U.S. Bankruptcy Court for the Western District of Michigan.

Effective the 1<sup>st</sup> day of November, 2010, the following schedule changes are made to Endorsement "A" of the Blanket Trustees' Bond. It is expressly understood that all other terms, conditions, agreements, and limitations of the underlying bond remain unchanged except as expressly stated in the below schedule.

<u>Increase/Decrease</u> <u>Add/Delete</u>	<u>Principal</u>	<u>Limit</u> <u>Per Case</u>	<u>Aggregate Limit</u> <u>As to All Cases</u>
Delete	Rose E. Bareham	\$2,000,000	\$10,000,000
Delete	John T. Piggins	\$2,000,000	\$10,000,000

Witness or Attest:

BY Christine Costa

FEDERAL INSURANCE COMPANY

BY Stephanie M. Harris  
Stephanie M. Harris - Attorney-In-Fact

ACCEPTED BY THE OFFICE  
OF THE U.S. TRUSTEE

BY \_\_\_\_\_



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Stacey Bolgrin, George S. Dadas, Stephanie M. Harris, Richard M. Myers and Brittany Piersynski** of Solon, Ohio

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bill bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **5th** day of **October, 2009**

*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

*David B. Norris, Jr.*  
David B. Norris, Jr., Vice President

STATE OF NEW JERSEY

County of Somerset

On this **5th** day of **October, 2009**

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by the authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**STEPHEN B. BRADY**  
Notary Public, State of New Jersey  
No. 2321097  
Commission Expires Oct. 28, 2014

*Stephen B. Brady*  
Notary Public

#### CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of securing and allocating bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct.
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seal of said Companies at Warren, NJ this **7th** day of **December, 2010**



*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3888 e-mail: surety@chubb.com



# EXHIBIT 2

281 Benien  
Modern Plastics Corp  
489 W. Shore Dr.  
Covington

**Thomas, Lorraine (DEQ)**

**From:** <Clarke.Rosita@epamail.epa.gov> (Clarke.Rosita@epamail.epa.gov)  
**Sent:** Thursday, March 26, 2009 12:58 PM  
**To:** crosetto.thomas@epa.gov; Klevs.Mardi@epamail.epa.gov  
**Cc:** Moore.Kendall@epamail.epa.gov; Schafer.Gary@epamail.epa.gov;  
Zolnierczyk.Kenneth@epamail.epa.gov; Thomas, Lorraine (DEQ)  
**Subject:** Re: Fw: Preliminary Budget - Modern Plastics

Thanks Mardi! Tom, can you have the assigned person keep me and MDEQ in the loop? Thank you.

Rosita Clarke-Moreno, Project Manager-Project Officer Brownfields & NPL Reuse Section #2  
SFD SWRAU Coordinator  
77 West Jackson Blvd (SM-7J)  
Chicago, IL 60604  
(312) 886-7251  
FAX (312) 697-2075

Mardi  
Klevs/R5/USEPA/U  
S

03/26/2009 09:59  
AM

To  
Rosita Clarke/R5/USEPA/US@EPA,  
crosetto.thomas@epa.gov  
cc  
Gary Schafer/R5/USEPA/US@EPA,  
Kendall Moore, Kenneth  
Zolnierczyk/R5/USEPA/US@EPA  
Subject  
Re: Fw: Preliminary Budget -  
Modern Plastics (Document link:  
Rosita Clarke)

sounds like a case for our Pesticides and Toxics Compliance Section! I have forwarded this on to the section chief, Tom Crosetto.

Mardi Klevs  
Chief  
Chemicals Management Branch  
Land and Chemicals Division  
U.S. EPA  
77 W. Jackson (LC-8J)  
Chicago, IL 60604  
312-353-5490  
fax: 312-353-4788

klevs.mardi@epa.gov

Rosita  
Clarke/R5/USEPA/  
US

To

03/26/2009 09:57  
AM

Mardi Klevs/R5/USEPA/US@EPA  
Gary Schafer/R5/USEPA/US@EPA

cc

Subject  
Fw: Preliminary Budget - Modern  
Plastics

Mardi, I don't remember what section you are in in LCD, but is there an inspection/enforcement section for PCBs in LCD.....Any help or guidance?

Rosita Clarke-Moreno, Project Manager-Project Officer Brownfields & NPL Reuse Section #2  
SFD SWRAU Coordinator  
77 West Jackson Blvd (SM-7J)  
Chicago, IL 60604  
(312)886-7251  
FAX (312)697-2075  
----- Forwarded by Rosita Clarke/R5/USEPA/US on 03/26/2009 09:56 AM  
-----

"Lorraine  
Thomas"  
<thomasl2@nichig  
an.gov>

03/26/2009 08:50  
AM

Rosita Clarke/R5/USEPA/US@EPA

To  
cc

Subject  
Re: FW: Preliminary Budget -  
Modern Plastics

Rosie: I have been trying to follow up on this report of leaking transformers but seem to have hit a brick wall. As you can see from the note here, the consultant performing a Phase I found leaking transformers.

I called the Realtor, the Trustee and the owner.

Realtor is Jim Ringler of Grubb & Ellis 269-699-5502  
Bankruptcy Trustee is Tom Tibble 269-342-9482  
Owner is Rob Orlaski 269-470-7047

The Realtor said he does not have a key to the facility. The trustee said he does not have a key and could I wait a few weeks until they sell the property and



it becomes someone else's problem. The owner said he had a key, but was on vacation out of town and would provide access to me when he returned on March 23. I have called and left 4 messages since March 23 and he does not answer nor will he return my call. The fence is locked and there are 3 strands of barbed wire at the top.

Is there someone in EPA who performs inspections for leaking PCB containing transformers? I think something needs to be done about this site before the responsible party (Orlaski) disappears with all assets.

Lorraine

PS: The location is Modern Plastics, 489 North Shore Drive, Benton Harbor. The facility is north of Ox Creek where the vinyl chloride from American Laundry is discharging to the surface water.

\*\*\*\*\*

To

"D Jeffrey Noel" <D\_Jeffrey\_Noel@Whirlpool.com>

cc

Subject

FW: Preliminary Budget - Modern Plastics

) Here is the info from Eric to digest. Let me know your thoughts.

Mike

-----Original Message-----

From: Eric Larcinese (mailto:eric@villaenv.com)

Sent: Tuesday, March 03, 2009 1:45 PM

To: Bell, Michael M.

Subject: Preliminary Budget - Modern Plastics

The Modern Plastics Corporation property located at 489 Northshore Drive, Benton Harbor, Michigan is considered a "facility" under part 201

of PA 451 of 1994, therefore a baseline environmental assessment and due

care plan will be required to afford the liability exemptions provided under the state law.

As important is the TSCA clean up of the leaking transformer located inside the building. The Phase II investigation confirmed that the transformer is leaking onto the concrete below. For budget purposes, the

amount of contaminated concrete was estimated. The final budget would require additional sampling to define the horizontal and vertical extent

of contamination. It is possible that the PCB leaked through cracks or seams in the concrete and contaminated the soil. If soil is contaminated

from the transformer, the soil must be treated as TSCA waste and transported to a special landfill near Detroit. The local landfills cannot accept TSCA waste.

Perhaps a non TSCA PCB issue to resolve is the contaminated saturated soil sample collected near the oil water separator. This would be considered a non-TSCA issue if the source of the PCB is unknown. It is doubtful that the current leak inside effected this.

area in the short period of time. For a non-TSCA contamination, the MDEQ uses 1000 ppb as the direct contact criteria. The one sample collected detected 650 ppb.

Local landfills may accept non-TSCA waste. In a telephone conversation with Ralph Balkema of Orchard Hills Landfill, they are not excited to accept the PCB waste due to the low levels allowed in their leachate. Orchard Hills may accept it and would be dependent on the amount and type (concrete versus soil). Other landfills within a one hour drive would accept the low levels on non-TSCA waste.

Up and coming changes to the state's environmental regulations may change the due care obligations of the new owner. The groundwater to surface water interface will probably be exceeded. The existence of the continual sheen emanating from Modern Plastics side of Ox Creek indicates a due care concern. Proper legal council should advise as to the legal ramifications of the PCB contamination under current and MDEQ propose regulations.

Asbestos containing materials have been identified at the site. We conducted a MIOSHA asbestos inspection for Modern Plastics approximately

10 years ago. We used the findings of that report to develop the preliminary budget. It must be noted that additional field work is needed since the MIOSHA inspection is different than a demolition inspection (NESHAP). More asbestos material will be encountered. The budget number provided is based on what is known with an added 25% for the upper range. The removal costs were based on similar removal throughout the previous year. Once all the asbestos material is defined (see our proposal previously submitted) and bid specifications prepared (we can provide this services for an added cost), we believe that the contractors price will be very competitive.

Other due care concerns appears limited. Thirty-one soil borings have been advanced between 2001 and 2009 field events. The final report will provide a chart of the positive concentrations compared to the MDEQ direct contact criteria. The direct contact criteria were not exceeded in any of the soil samples collected and analyzed. One of the soil sampled detected 140 ppm of lead which may require additional testing for the fines and coarse grains. One area near the boiler room exhibited

fuel odor odor in the soil and ground water in 2001 and 2009 but the detectable amounts were negligible. PNA were detected in a soil sample that was collected inside the injection room 1 near the south portion of

the building.

Several ground water samples from across the site were analyzed for solvents. There were on site uses for solvents as well as a potential for offsite migration of solvents to onsite. No solvents were detected in any of the samples except for near the oil-water separator. However, none of the solvents detected were chlorinated solvents.

Based on the site work to date, the following is a preliminary budget. It must be noted that the budget will change as definition of some of the issues is resolved. The low range, if a range is provided is based on the facts known to date, or a realistic approach (such as soil disposal around oil/water separator). A worst case scenario is not presented.

1. Disposal of liquid waste \$17,000
2. Disposal of universal waste 16,480
3. Asbestos removal \$180,000 - /230,000/
4. Transformer removal/disposal (during overall demolition) \$47,000
5. Transformer basin clean up \$10,000 (\$1250 ea)
- /6. //PCB contaminated concrete (based on 4000 SF) \$20,000-36,000/
7. PCB contaminated soil (non-TSCA) by oil-water separator (if needed, based on 1000 CY) \$60,000

8. Baseline Environmental Assessment \$1200

9. Due Care Plan - \$1200-5000

Preliminary TOTAL, \$292,880-422,680

The contractor who helped to put this budget together, Environmental Recycling Group, walked through the site and prepared their preliminary proposal. They included a lot of notes and caveats, many of them outlined above. Our final report will address how we can eliminate some of the unknowns such as the PCB transformer leak. This area seems to be the biggest unknown. If it is localized, line item #6 provides a good budget. However, if it is widespread (the roof leaks are severe in the area so rain and the snow melt off increases the change of enlarging the

contaminated area).

Please contact me at 269-927-2434 at your convenience to discuss in detail.

Eric Larcinese

Villa Environmental

Lorraine Thomas

Senior Environmental Quality Analyst

Michigan Department of Environmental Quality Remediation & Redevelopment, Division

7953 Adobe Road

Kalamazoo, MI 49009

phone: (269) 567-3526

fax: (269) 567-9440

e-mail: thomasl2@michigan.gov

# EXHIBIT 3

Hillegonds, Timothy <THillegonds@wnj.com>  
To: "Mark S. Demorest" <mark@demolaw.com>  
Cc: "TomTib@aol.com" <TomTib@aol.com>

Fri, Jan 25, 2013 at 6:13 AM

Mark, attached is an access agreement for your review. I'm out of the office this week, and don't have access to my file and the name of your client. The trustee does not have a key and his contact at the debtor is not responding to the trustee. The trustee suggests that after the attached is completed, signed and returned, you get a lock smith to change the locks and send the trustee a duplicate key. Tim



Timothy Hillegonds | Partner  
Warner Norcross & Judd LLP  
900 Fifth Third Center | 111 Lyon Street NW | Grand  
Rapids, MI 49503-2487  
p 616.752.2132 | m 616.485.9938 | f 616.222.2132  
thillegonds@wnj.com | Profile | V-Card

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**From:** Mark S. Demorest [mailto:mark@demolaw.com]  
**Sent:** Thursday, January 24, 2013 8:48 PM  
**To:** Hillegonds, Timothy  
**Subject:** Modern Plastics

Tim:

Have you received any response from the Trustee regarding access to the property?

Mark

[Quoted text hidden]

---

 8884203\_1 Right of Access Agreement (Tibbie\_Modern).DOCX  
25K

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# EXHIBIT 4

From : TomTib <tomtib@aol.com>  
To : Siravo, Steven M  
Sent : Thu Dec 17 16:25:33 2009  
Subject : Re: 18300 US-12/Modern Plastics  
Nothing at all. I keep assuming that the attorney in Detroit is working with the buyer. I can get more involved if this is stalled. Everyone knows it is a toxic mess, so if the buyer is going to get it, what is the delay?

Please let me know if you want me to apply pressure. And if so, who do you want me to call (and a phone number). Thanks, TT

In a message dated 12/17/09 16:51:35 Eastern Standard Time,  
steve.siravo@haml.com writes:

Have you heard anything on Benton harbor?

---

From: TomTib [mailto:tomtib@aol.com]  
Sent: Thursday, December 17, 2009 4:39 PM  
To: Siravo, Steven M  
Subject: Fwd: 18300 US-12/Modern Plastics

Hey Steve,

I talked with Jim Ringler this morning and he mentioned he had talked with you recently too. I can file a claim for vandalism, but from what he said, I doubt it will exceed the deductible.

I suggested that Jim get a cleanup crew and re-secure the building, then lower the price to the \$900,000 range. Thoughts?

Tom Tibble

-----Original Message-----

From: James Ringler <Jring@fourway.net>  
To: 'TomTib' <tomtib@aol.com>  
Sent: Tue, Dec 15, 2009 8:50 am  
Subject: 18300 US-12/Modern Plastics  
Hi Tom:

Here is an update on the property. I have showed it quite a few times over the last 2 months. I have one prospect that is interested in the property and has the money to move forward. He is doing some due diligence prior to making an offer. The property has been broken into by scrappers and they have been scrapping out the wire and other stuff. Three were arrested this last week. I didn't notice the scrapping until the last time I showed it. I would recommend bringing the price down again as it is not going to bring the \$ 1,450,000. I went to an auction last Thursday on a golf course that I sold last year for \$ 830,000. High bid at the auction was \$ 175,000. It is not a pretty market right now.

Also, I do have an interested party in the Wheelabrator dust collector that



is in the building. Not worth much over \$ 500.00 due to age, condition and cost of moving but he would probably buy it. I would sell whatever you can that is left in there before it gets scrapped or stolen out of there. Just my recommendation. Give me a call to discuss moving forward. (574) 298-8980. Thanks!

Jim

Jim Ringler  
Real Estate Advisor-Michigan & Indiana  
Grubb & Ellis/Cressy & Everett  
3930 Edison Lakes Pkwy, Suite 200, Mishawaka, IN 46545  
Main: 574.271.4060 Direct: 574.485.1561 Cell: 574.298.8980 Fax:  
574.271.4292  
[jimringler@cressyandeverett.com](mailto:jimringler@cressyandeverett.com)  
[www.cressyandeverett.com](http://www.cressyandeverett.com)  
[www.jimringler.com](http://www.jimringler.com)

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# EXHIBIT 5



**M.J. White & Son, Inc.**

3759 Broadmoor Ave SE, Suite F  
Kentwood, MI 49512  
(888) 992-4404 Phone  
(616) 937-4404 Fax  
www.mjwhiteandson.com

**Insured:** Modern Plastic  
**Property:** 489 North Shore Dr.  
Benton Harbor, MI 49022

**Cellular:** (269) 519-3339

**Estimator:** Peter Anderson

**Cellular:** (616) 307-0320  
**E-mail:** panderson@mjwhiteandson.com

**Contractor:**  
**Company:** M.J. White & Son, Inc.  
**Business:** 3759 Broadmoor Avenue SE, Suite F  
Kentwood, MI 49512

**Business:** (888) 992-4404  
**E-mail:** www.mjwhiteandson.com

**Claim Number:**

**Policy Number:**

**Type of Loss:**

**Date of Loss:**  
**Date Inspected:**

**Date Received:**  
**Date Entered:** 9/19/2013 7:54 AM

**Price List:** MIKA8X\_SBP13  
**Restoration/Service/Remodel**  
**Estimate:** 2013-09-19-0754

Where colors, textures, shades or hues, or materials are to be matched, M.J. White & Son, Inc. shall make every reasonable effort to do so using standard materials, but does not guarantee a perfect match.

Insurance related repairs are subject to revisions, reductions, and negotiations by insurance/adjusting personnel which may change the contract value.

**JOB DESCRIPTION:** Building restoration

**NOTES:** This is just a short list of some of the items needed not to be used as a complete scope no steel, asbestos and lead mitigation, no roofing, block work or finishes included.

**M.J. White & Son, Inc.**

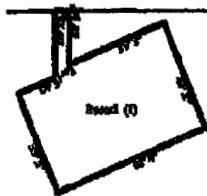
3759 Broadmoor Ave SE, Suite F  
 Kentwood, MI 49512  
 (888) 992-4404 Phone  
 (616) 957-4404 Fax  
 www.mjwhiteandson.com

2013-09-19-0754

**Main Level****Modern Plastic****Height: 14' 6"**

Modern Plastic

21,167.58 SF Walls	105,812.30 SF Ceiling
126,979.88 SF Walls & Ceiling	105,812.30 SF Floor
11,756.92 SY Flooring	1,459.83 LF Floor Perimeter
1,459.83 LF Cell. Perimeter	

**Subroom: Room2 (1)****Height: 14' 6"**

3,324.37 SF Walls	2,565.27 SF Ceiling
6,091.64 SF Walls & Ceiling	2,565.27 SF Floor
285.03 SY Flooring	243.20 LF Floor Perimeter
243.20 LF Cell. Perimeter	

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
1. R&R Commercial electrical (SF of Bldg) - Heavy load	108,377. SF 57	1.14	14.80	28,351.37	351,178.00	2,107,068.04
2. Rough-in plumbing - Commercial - 1-3 level	108,377. SF 57	0.00	5.37	8,193.34	118,036.18	708,217.07
3. Clean more than the floor - Heavy	325,132. SF 71	0.00	0.29	19,508	18,896.72	113,380.29
4. Soda blasting - Heavy	133,071. SF 53	0.00	1.88	4,331.05	50,945.12	305,670.63
5. Cleaning Technician - per hour	960.00 HR	0.00	30.41	0.00	5,838.72	35,032.32
6. Prime & paint metal roofing	108,377. SF 57	0.00	0.70	1,885.77	15,550.02	93,300.09
7. Seal truss system - up to 3/12	108,377. SF 57	0.00	1.04	2,080.85	22,958.72	137,752.24
8. Scissor lift - 20' platform height - electric powered	270.00 DA	0.00	100.00	0.00	5,400.00	32,400.00
13. Dumpster load - Approx. 40 yards, 7-8 tons of debris	8.00 EA	524.00	0.00	0.00	934.40	5,606.40
<b>Totals: Modern Plastic</b>				<b>43,237.66</b>	<b>589,737.88</b>	<b>3,538,427.10</b>
<b>Total Main Level</b>				<b>43,237.66</b>	<b>589,737.88</b>	<b>3,538,427.10</b>
<b>Line Item Totals: 2013-09-19-0754</b>				<b>43,237.66</b>	<b>589,737.88</b>	<b>3,538,427.10</b>

2013-09-19-0754

9/19/2013

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**M.J. White & Son, Inc.**

3759 Broadmoor Ave SE, Suite F  
Kentwood, MI 49512  
(888) 992-4404 Phone  
(616) 937-4404 Fax  
www.mjwhiteandson.com

**Grand Total Areas:**

24,693.96 SF Walls	108,377.57 SF Ceiling	133,071.53 SF Walls and Ceiling
108,377.57 SF Floor	12,041.93 SY Flooring	1,703.03 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	1,703.03 LF Coll. Perimeter
108,377.57 Floor Area	108,944.27 Total Area	24,693.96 Interior Wall Area
26,294.97 Exterior Wall Area	1,696.45 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	



**M.J. White & Son, Inc.**

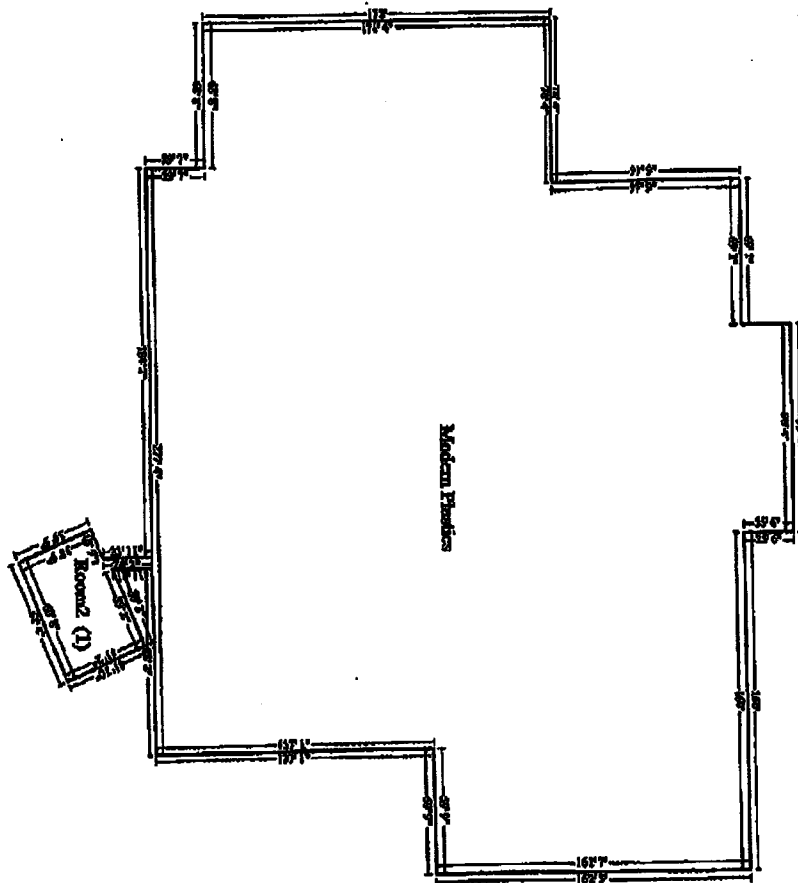
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(888) 992-4404 Phone  
(616) 957-4404 Fax  
www.mjwhiteandson.com

**Summary for Dwelling**

Line Item Total	2,903,431.56
Material Sales Tax	43,257.66
Subtotal	2,948,689.22
Overhead	294,868.94
Profit	294,868.94
Replacement Cost Value	\$3,538,427.10
Net Claim	<u>\$3,538,427.10</u>

Peter Anderson

Main Level



2013-09-19-0754

9/19/2013

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Main Level

